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September 7, 2004

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Rulemaking to Amend Public Pay Telephone Rules 1220-4-2-.43-.54*
Docket No. 04-00211

Dear Chairman Miller:

In accordance with the recent Notice of Rulemaking issued by the Authority, Sprint Communications, Company, L.P. is submitting an original and thirteen copies of its comments regarding Rules 12202-4-2-.43 through .54.

Please do not hesitate to contact me if you have any questions concerning this filing.

Sincerely yours,

Edward Phillips

HEP:hep

Enclosures

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:)	
)	
AMEND PUBLIC PAY TELEPHONE)	DOCKET NO. 04-00211
RULES 1220-4-2-.43-.54)	

COMMENTS OF UNITED TELEPHONE – SOUTHEAST, INC. &
SPRINT COMMUNICATIONS COMPANY, L.P.

The above named companies (hereinafter “Sprint”) have reviewed the Tennessee Regulatory Authority’s (“Authority”) proposed rule amendments to 1220-4-2-.43 through .54 (“Pay Telephone Rules”) in the “Notice of Rulemaking Hearing” posted on the Authority’s website on August 4, 2004. Sprint comments herein on (1) the Authority’s proposed rule amendment instituting a rate cap on inmate pay telephone calls, (2) certain other Pay Telephone Rules that need amendment in order to comply with 47 U.S.C. 276 and the Federal Communications Commission’s (“FCC”) orders in CC Docket No. 96-128, and (3) select other Pay Telephone Rules that Sprint suggests amending for competitive environment and administrative reasons.

Inmate Payphone Rate Caps, 1220-4-2-.45(2) & (8). The Notice of Rulemaking proposes a new maximum rate for inmate pay telephone local collect calls of \$1.50, including operator surcharge. In addition, the proposed rule amendments require that inmate payphones shall charge for intrastate toll calls no more than the rates approved by the Authority for the dominant intraLATA and interexchange carrier in the state. In response to an earlier notice in Authority Docket 04-00166, Sprint filed a letter dated July 8, 2004, stating its position regarding a suggested interim maximum rate of \$1.50 for

inmate local collect pay phone calls. Sprint encouraged the Authority not to establish such a rate cap but instead to allow the marketplace to continue to determine rates.

Sprint currently provides public pay telephone services in Tennessee but does not provide inmate payphones in the state, although Sprint does consider itself a potential bidder on future inmate payphone contracts. While it has not so participated, Sprint is aware of the outstanding rulemaking proceeding concerning inmate payphones at the FCC in CC Docket No. 96-128.¹ The federal preemption of local rate caps, such as the one proposed here, and alternative proposals meant to further competition for inmate pay telephone services, have been brought before the FCC in that rulemaking.

At this time, Sprint does not specifically oppose the Authority's proposed \$1.50 rate cap. However, Sprint suggests that the \$1.50 amount not be written into a formal rule due to the difficulty involved in later amending such a rule to reset the cap. The Pay Telephone Rules should simply provide for a rate cap where the specific amount is determined by the Authority in a separate proceeding. In addition, Sprint believes the Authority should be willing to revisit the matter generally, and any rate cap amount specifically, upon any action by the FCC and/or a showing that the Authority rate cap is producing adverse results on inmate payphone competition.

Directory Assistance & Telephone Directories, 1220-4-2-.45(1) & (6). The Pay Telephone Rules currently provide that public pay telephones must provide calls to local and intrastate directory assistance free of charge.² The Pay Telephone Rules also provide

¹ *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128, Order on Remand & Notice of Proposed Rulemaking, FCC 02-39, Released February 21, 2002; Wright Public Notice, DA-03-4027, Released December 31, 2003.

² Also see Authority Rule 1220-4-2-.49(c).

that local telephone directories shall be placed at each public pay telephone service location upon commencement of service.

The FCC's Report and Order in CC Docket No. 96-128 asked that the state commissions review their regulations applicable to pay telephones, to ensure that competition is not unduly impaired.³ In that order, the FCC specifically found that fair compensation considerations required that pay telephone owners be allowed to charge a market-based rate for 411 and other directory assistance calls from payphones.⁴

Sprint believes this FCC requirement means that Rule 1220-4-2-.45(1) and 1220-4-2-.49(c) must be amended to exclude free pay telephone calls to local and intrastate directory assistance. However, there are circumstances under which companies such as Sprint find it more economical to offer free directory assistance service rather than providing local directories at each public pay telephone location. Thus, Sprint suggests that the public interests are met by adoption of a rule that public pay telephone owners must offer free of charge either local directory assistance or local directories. The Pay Telephone Rules current requirement that both directory options be offered free of charge is overlapping and creates unneeded expense for pay telephone owners in a declining environment. Sprint's proposal brings the Pay Telephone Rules into compliance with federal requirements while allowing pay telephone owners needed business flexibility.

Two-Way Calling Capability, 1220-4-2-.45(3). The Pay Telephone Rules currently require public pay telephones to offer, among other things, two-way calling capability. Sprint is concerned about instances where businesses effectively substitute a regular business line for a pay telephone line by receiving large amounts of incoming

³ *Id.*, First Report and Order, FCC 96-388, Released September 20, 1996 at ¶60

⁴ *Id.* at ¶62

calls. Sprint asks that the Authority amend the Pay Telephone Rules' presumption that all public pay telephones have two-way calling capability "unless waived by the Authority" with a presumption that public pay telephones may be one-way unless otherwise required by the Authority. To disclose the calling capability of the public pay telephone, Sprint would suggest the Authority adopt rule language similar to that in the Virginia State Corporation Commission's ("VSCC") December 13, 2001 Rule 20VAC 5-407-50 which states,

C. A payphone instrument shall receive incoming calls unless it is prominently marked with the words 'OUTGOING CALLS ONLY,' 'NO INCOMING CALLS,' or similar language.

Authorization Renewal, 1220-4-2-.48(2). The current Pay Telephone Rules should be amended to state that the annual pay telephone renewal authorizations and inspection fee due by statute on July 1st shall include inspection fees calculated upon the number of pay telephone service locations a pay telephone owner has as of the preceding May 1st rather than the current June 30th date. This suggested clarification would give pay telephone owners sixty (60) days to process inspection fee payments. The current process has proved administratively ambiguous and has caused unnecessary compliance hardships.

Public Pay Telephone Service Rates, 1220-4-2.49(1)(a). The proposed rule amendment provides that it will be a violation of the Authority's rules for a pay telephone service provider to "charg[e] an amount for calls which exceed the amount authorized by the Authority." Sprint believes this proposed rule should be limited in application to inmate pay telephone services. The rate caps discussed above only apply to inmate pay telephone services. Public pay telephone services are not subject to any other rate

regulation by the Authority. The FCC's First Report and Order specifically deregulated the rates for pay telephone local coin calls⁵ and the rates of interexchange carriers have been deregulated pursuant to Tenn. Code Ann. §65-5-101(a)(9). Likewise, intrastate operator-assistance services are addressed by Tenn. Code Ann. §65-5-206, but nothing in the statute necessarily allows the Authority to "authorize" a maximum amount that a provider may charge for such services.

Penalties for Violations, 1220-4-2-.51(1), (2) & (3). The Pay Telephone Rule should be amended to better reflect the responsibility of the local telephone company in a competitive environment. Specifically, subsection one (1) should have the phrase "by the Authority" inserted after "Upon determination".

Subsection two (2) should be similarly amended so that it reads in full:

The Authority shall send a written notice to the local telephone company providing access to the instrument, with a copy to the instrument owner, directing the local telephone company to disconnect the pay telephone line service at the designated location. The notice shall state that upon correction of the violation, charges for reconnection shall apply as specified in the tariff of the local exchange company.

Lastly, subsection three (3) should be amended so that last sentence is deleted in full. The local telephone company incurs a cost regardless of whether the violation causing disconnection is intentional or not. The pay telephone owner is the cost causer in this situation regardless and should not be accorded a refund of reconnection charges.

Unauthorized Payphone Service, 1220-4-2-.54. In a similar manner as immediately above, the local telephone company should only disconnect unauthorized payphone service upon the request of the TRA.

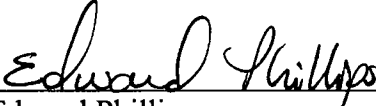
⁵ *Id.* at ¶61.

Lastly, Sprint observes the following typographical errors and suggested word changes for clarification purposes only.

- 1220-4-2-.44(1). Typographical error regarding “sub-mission”.
- 1220-4-2.45(10). The word “Authority” should be inserted at the end of the sentence.
- 1220-4-2-.49(1)(d). Suggest adding the phase “for payphone line service” at the end of the sentence.
- 1220-4-2-.50(3). The word “uncollected” should be “uncorrected”.
- 1220-4-2-.54. The comma in the first line should be deleted.

Respectfully Submitted,

UNITED TELEPHONE – SOUTHEAST, INC., &
SPRINT COMMUNICATIONS COMPANY, L.P.



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September 7, 2004